

STATE OF MARYLAND



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May 18, 1999

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
TWA-325
Washington, DC 20554

Re: CC Docket 94-129; FCC 98-334

**Ex Parte Comments of the National Association of State Utility Consumer
Advocates Regarding Proposal for an Industry Funded Third Party Liability
Administrator**

Dear Ms. Salas:

Pursuant to 47 CFR 1.1206, enclosed for filing in the public record in the above-referenced proceeding, please find an original and two (2) copies of the Ex parte Comments of The National Association of State Utility Consumer Advocates Regarding the Proposal for an Industry Funded Third Party Liability Administrator.

I am enclosing an additional copy which I request that you receipt stamp and return to me in the enclosed stamped, self addressed envelope.

Pursuant to the Commission's rules, also enclosed is a diskette containing this document.

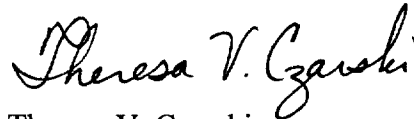
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Magalie Roman Salas, Secretary
May 18, 1999
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Should you have any questions regarding this submission, please do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in black ink that reads "Theresa V. Czarski". The signature is written in a cursive style with a large, stylized initial "T".

Theresa V. Czarski
Assistant People's Counsel
**On Behalf of the National
Association of State Utility
Consumer Advocates**

cc: All Parties of Record

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

IN THE MATTER OF IMPLEMENTATION
OF THE SUBSCRIBER CARRIER
SELECTION CHANGES PROVISIONS OF
THE TELECOMMUNICATIONS ACT OF
1996

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CC Docket No. 94-129

POLICIES AND RULES CONCERNING
UNAUTHORIZED CHANGES OF
CONSUMERS LONG DISTANCE
CARRIERS

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**EX PARTE COMMENTS OF THE NATIONAL ASSOCIATION OF STATE
UTILITY CONSUMER ADVOCATES REGARDING PROPOSAL FOR AN
INDUSTRY FUNDED THIRD PARTY LIABILITY ADMINISTRATOR**

The National Association of State Utility Consumer Advocates (NASUCA) respectfully submits the following comments in response to the proposal for a voluntary, industry funded third party liability administrator for slamming complaints. NASUCA is an association of 42 consumer advocates in 39 states and the District of Columbia whose members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. NASUCA submits these comments in response to the joint petition for waiver filed by AT&T Corporation, MCI World Com, Inc. and others in the above-captioned proceeding on March 30, 1999.¹

¹ NASUCA previously filed both direct and reply comments in the above-captioned proceeding as well as a Petition for Reconsideration of the Second Report and Order. By these comments, NASUCA reiterates the positions advocated in both its direct and reply comments as well as its Petition for Reconsideration.

I. Summary

NASUCA has concerns regarding how the third party administrator (TPA) proposal, if adopted, will mesh with state slamming enforcement laws that have already been adopted. To that end, NASUCA supports the position of the National Association of Regulatory Utility Commissioners (NARUC) which pointed out that the TPA proposal ignores existing state anti-slamming protections, unfairly disadvantages slammed customers with the three month limit on compensation, unfairly excludes from TPA consideration complaints related to misleading or deceptive practices and fails to provide for appeal rights for consumers who are dissatisfied with the decisions of the TPA. Additionally, NARUC pointed out that the creation and operation of an effective TPA would be very expensive and that it was highly doubtful that consumers would trust a slamming complaint resolution process run by the very industry responsible for many of the slamming complaints. NASUCA urges the Commission to give NARUC's comments full consideration.

II. Discussion

NASUCA has been quite consistent in its comments that the Commission should view the substantive and procedural aspects of its current and proposed rules from the perspective of the consumer. While remedies and procedures to prevent slamming and in response to slamming once it has occurred must both be practical and cost effective, NASUCA has always urged that, in the final analysis, whatever rules are adopted must put the consumer first and hold the consumer harmless from this insidious practice.

In its previous comments, NASUCA, as well as state public utility commissions and other public advocates, has shown that many jurisdictions already provide a more customer-oriented remedy than that set forth in either the proposed FCC rules or the proposed TPA. NASUCA is confident that the jurisdictions that already have particular state anti-slamming protections in place will be able to protect the rights of consumers with less complexity or cost than either the FCC's proposed approach or the proposed TPA. Therefore, at a minimum, NASUCA urges the FCC to recognize and preserve the use of state enforcement mechanisms which are already existing or may be adopted in the future. There is no need to adopt a proposal which preempts state legislation and regulation with an industry sponsored, federal dispute resolution process. To the extent that a state elects to run its own process for resolving slamming complaints, the state program should be given precedence over a TPA. Alternatively, if the FCC ultimately decides to adopt the proposed TPA, NASUCA supports the NARUC proposal to allow consumers to choose to use state enforcement mechanisms rather than the TPA.

NASUCA is also concerned that the Joint Movants' request for a delay in the effective date of the Commission's rules to permit a third party liability administrator proposal to be implemented will distract the Commission from adoption of final, consumer protective slamming rules. Consumers who have been slammed have waited long enough for protection. NASUCA urges the FCC to move forward promptly to implement its slamming rules and to hold telecommunications providers responsible for either their own actions or the actions of their agents.

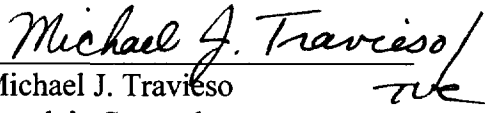
NASUCA believes that the Joint Movants may have misled the Commission in their request for delay and for waiver of the Commission's rules. Joint Movants have indicated that their proposal "has been the subject of extensive industry discussions and consultations with other interest parties, *including consumer groups*, prior to offering this filing to the Commission." Joint Petition for Waiver, p. 4. Additionally, Joint Movants represent to the Commission that they believe that a "significant portion of the industry will elect to participate in the alternative processes requested in the waiver of petition." See Joint Petition of Waiver, p. 4, ft. 6. Despite these assertions, no consumer group has signed the Joint Petition for Waiver. In fact, the Joint Petition for Waiver appears to be supported only by very large telecommunications concerns. Additionally, as noted by these comments, it should be clear that at least one large consumer group (NASUCA) as well as a group representing regulators (NARUC) see potential pitfalls with the TPA proposal. Consumer advocates have responsibilities under most state slamming statutes and regulations and can best carry out these responsibilities in state forums.

III. Conclusion

NASUCA respectfully requests that the Commission consider the impact the TPA proposal will have on existing state anti-slamming enforcement efforts. To that end, NASUCA supports the comments of the National Association of Regulatory Utility Commissioners. NASUCA also urges the Commission to reject any proposal which either provides for an industry driven enforcement mechanism or one which bypasses state created remedies for telephone customers who have been slammed or crammed.

Continued for signature:

Respectfully submitted,


Michael J. Travieso
People's Counsel

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For The National Association Of
State Utility Consumer Advocates